

Message Text

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ORIGIN OPIC-06

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DRAFTED BY OPIC/GC CFLIPMAN
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-----079578 221814Z /46
R 221711Z MAY 78
FM SECSTATE WASHDC
TO AMEMBASSY DACCA

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FROM OPIC

E.O. 11652: N/A

TAGS: EINV

SUBJECT: BELBAGCO CLAIM

1. OPIC ACTING PRESIDENT RUTHERFORD POATS RECENTLY
RECEIVED A LETTER FROM AMBASSADOR SIDDIQI DATED MAY 2,
1978, AS FOLLOWS:

"NO.EM/15/78 MAY 2, 1978

DEAR MR. POATS,

PLEASE REFER TO OUR DISCUSSIONS ON FEBRUARY 13, 1978.
I HAVE ALSO SEEN MR. HUNT'S LETTER TO MR. KARIM ENCLOSING
A COPY OF TEXT OF THE AIDE MEMOIRE FROM MR. ZAINUL
ABEDIN, JOINT SECRETARY FOR NATIONALIZED INDUSTRIES.
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2. YOU ARE AWARE THAT THE GOVERNMENT OF BANGLADESH TOOK
SPECIAL STEPS TO COMPENSATE THE LOSS OF THE AMERICAN SHARE
OF THE PAKISTAN FABRICS COMPANY LTD., THOUGH THE CONCERN
WAS REGISTERED AS A PAKISTANI COMPANY WITH A LIMITED
AMOUNT OF PAKISTANI CAPITAL.

3. THE OPIC INFORMED THE BANGLADESH GOVERNMENT THAT ACCORD-
ING TO THEIR CALCULATION, THE NET VALUE OF ASSETS OF

PAKISTAN FABRICS COMPANY LIMITED, AS ON 26TH MARCH, 1972
WAS TK.53,18,996/-EQUIVALENT TO US DOLLAR 1,561,440.00 ON
THE BASIS OF FOLLOWING RATES OF EXCHANGE:

(I) FOR FIXED ASSETS : 1 US DOLLAR EQUAL TK.4.76

(II) FOR OTHERS : 1 US DOLLAR EQUAL TK.7.59

AFTER PROTRACTED DELIBERATIONS, THE US EMBASSY INFORMED
THE BANGLADESH GOVERNMENT THAT THEY WOULD BE AGREEABLE TO
SETTLE THE CLAIM FOR A LUMP SUM AMOUNT OF US DOLLAR
9,20,000/-PAYABLE IN TAKA EQUIVALENT OVER 37 MONTHS,
WITHOUT ANY INTEREST. UPON THIS THE GOVERNMENT OF
BANGLADESH OFFERED TO SETTLE THE CLAIM FOR TK. 39,40,241
TAKING INTO CONSIDERATION THE EXCHANGE RATE OF TK.7.59 TO
A DOLLAR. THE US EMBASSY INFORMED THE BANGLADESH GOVERN-
MENT THAT THEY WOULD BE AGREEABLE TO SETTLE THE CLAIM AT
US DOLLAR 8,25,000 PAYABLE IN TAKA AT THE RATE OF EXCHANGE
WHICH WOULD BE PREVAILING ON THE DATE OF ACTUAL PAYMENT
OF THE INSTALMENTS.

4. SINCE THE AMOUNT OF COMPENSATION HAS CONSISTENTLY BEEN
CALCULATED ON THE BASIS OF TAKA AMOUNT THE LAST OFFER
MADE DURING OUR DISCUSSIONS OF ADDITIONAL US DOLLAR
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100,000 SHOULD ALSO BE TAKEN IN TERMS OF TAKA THAT
MEANS THE TOTAL AMOUNT OF COMPENSATION OFFERED SO FAR IN
THIS CASE WILL AMOUNT TO TK. 47,39,241/-.

5. YOU WILL APPRECIATE THAT IT WOULD BE UNFAIR FIRST TO
CONVERT THE NET COMPENSATION FIGURES INTO DOLLAR AT
TK. 4.76 AND TK. 7.59 FOR DETERMINING THE DOLLAR VALUE OF
THE COMPENSATION AND THEN RECONVERT IT AGAIN INTO TAKA
AT THE CURRENT RATE TO DETERMINE THE TAKA EQUIVALENT.
SUCH SIMULTANEOUS CONVERSION AND RECONVERSION WILL MEAN
THAT THE GOVERNMENT OF BANGLADESH WILL BE REQUIRED TO PAY
MUCH MORE THAN THE AGREED AMOUNT OF COMPENSATION IN TAKA.
SUCH PROCEDURE WILL ALSO CONSTITUTE A DEPARTURE FROM
OTHER FOREIGN INVESTMENT CASES OF U.K. AND JAPANESE
COMPANIES SETTLED SO FAR BY THE GOVERNMENT OF BANGLADESH.
THE PRINCIPLE FOLLOWED IN THOSE CASE WAS THAT THE NET VALUE
AS DETERMINED IN TAKAS AS ON THE DATE OF TAKING OVER WERE
CONVERTED INTO THE CURRENCY OF THE INVESTOR AT THE RATE
PREVAILING ON THE DATE OF ACTUAL REMITTANCE.

6. IN THE INTEREST OF SETTLING THE CASE EXPENDITIOUSLY IT
IS SUGGESTED THAT LET US AGREE ON THE TOTAL TAKA FIGURES

FOR THE AMOUNT OF COMPENSATION AT TK. 47,39,241/- TO
BE PAID AS AGREED EARLIER IN 37 NUMBERS ON MONTHLY

INSTALMENTS WITHOUT INTEREST. I AM SURE YOU WILL AGREE
THAT IT WOULD BE IN THE INTEREST OF THE BOTH SIDES TO
ARRIVE AT AN AGREED FIGURE WITHOUT FURTHER DELAY AND MOVE
AHEAD TO ENCOURAGE AND RENEW INSURANCE FACILITIES TO
OTHER U.S. PRIVATE INVESTMENTS IN BANGLADESH.

YOUR SINCERELY, (M. R. SIDDIQI)"

2. IN SEVERAL IMPORTANT RESPECTS THIS LETTER WITHDRAWS
FROM POSITIONS PREVIOUSLY OFFERED BY THE BDG AND FALLS
SHORT OF THE MINIMUM TERMS OPIC EXPECTS TO ACHIEVE, FOR
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EXAMPLE APPROPRIATE VALUATION OF THE CLAIM AS OF THE
MARCH 1972 DATE OF NATIONALIZATION AND PROTECTION AGAINST
FURTHER DILUTION OF SUCH AMOUNT THROUGH POSSIBLE FUTURE
DEVALUATION OF THE TAKA. ON MAY 18 OPIC REPLIED TO
AMBASSADOR SIDDIQI AS FOLLOWS:

"MAY 18, 1978

HIS EXCELLENCY MUSTAFIZUR RAHMAN SIDDIQI
EMBASSY OF THE PEOPLE'S REPUBLIC OF BANGLADESH
3421 MASSACHUSETTS AVENUE, N.W.
WASHINGTON, D.C. 20007

RE; CLAIM OF OPIC/BELBAGCO

DEAR AMBASSADOR SIDDIQI:

YOUR LETTER OF MAY 2, 1978 HAS CAUSED US MUCH CONCERN AND
REGRET SINCE IT APPEARS TO EMBODY A WITHDRAWAL NOT ONLY
FROM THE POSITION I THOUGHT WE HAD REACHED IN OUR DIS-
CUSSIONS IN FEBRUARY, BUT ALSO FROM THE PREVIOUS POSITION
OF YOUR GOVERNMENT.

IN OUR FEBRUARY MEETING YOU PROPOSED A SETTLEMENT ON THE
BASIS OF A US 100,000 DOLLAR INCREASE IN YOUR GOVERN-
MENT'S PREVIOUS OFFER OF US DOLLAR 519,135.83. I ADVISED
THAT THIS WOULD BE ACCEPTABLE TO OPIC IF YOU COULD NOT
PERSUADE YOUR GOVERNMENT TO AGREE TO A SLIGHTLY HIGHER
FIGURE HALF-WAY BETWEEN OUR RESPECTIVE PREVIOUS OFFERS.
MR. HUNT FORWARDED A FORM OF SETTLEMENT AGREEMENT TO YOU
THE NEXT DAY ON THE BASIS OF OUR MEETING.

THUS, I AM DISMAYED TO RECEIVE YOUR LETTER PROPOSING A
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SETTLEMENT WHICH WOULD REDUCE OPIC'S RECOVERY BY ONE-HALF OR MORE FROM THE FIGURE WE HAD DISCUSSED.

I MUST COMMENT ON THE STATEMENT IN YOUR PARAGRAPH FIVE THAT THE AMOUNT OF COMPENSATION HAS CONSISTENTLY BEEN CALCULATED ON THE BASIS OF TAKA AND THE REFERENCE IN THE SUCCEEDING PARAGRAPH TO 'THE AGREED AMOUNT OF COMPENSATION IN TAKA.'

IT HAS BEEN THE CONSISTENT POSITION OF OPIC THAT THE DOLLAR VALUE OF COMPENSATION SHOULD BE AGREED TO AND MAINTAINED IN CONNECTION WITH THE AGREEMENT BY OPIC TO ACCEPT PAYMENT IN TAKA ON A DEFERRED BASIS. THIS POSITION WAS CLEARLY SET FORTH IN DISCUSSIONS BETWEEN OUR REPRESENTATIVES IN DACCA LAST SUMMER, AND MORE RECENTLY IN THE SEPTEMBER 19, 1977 LETTER TO JOINT-SECRETARY ABEDIN, A COPY OF WHICH WAS FURNISHED TO YOU PRIOR TO OUR DISCUSSIONS. WE HAD UNDERSTOOD THAT YOUR GOVERNMENT WAS SIMILARLY NEGOTIATING FOR A COMPROMISE COMPENSATION AMOUNT IN TERMS OF DOLLARS TO BE RECOVERED BY OPIC, WHETHER OR NOT PAYMENT WAS TO BE IN TAKAS. THE USE OF THE TK. 7.59 TO U.S. DOLLAR ONE RATE IN CONVERTING THE TAKA NET ASSET FIGURE TO THE US DOLLAR 519,135.83 FIGURE IN THE AUGUST 1977 OFFER FROM JOINT-SECRETARY ABEDIN IS POINTLESS OTHERWISE. DOLLAR FIGURES SERVE NO PURPOSE IN THESE NEGOTIATIONS OTHER THAN TO QUANTIFY THE RECOVERY THAT CAN BE ACHIEVED BY OPIC. YOUR GOVERNMENT'S AUGUST 1977 PROPOSAL FIXED THE DOLLAR AMOUNT THAT COULD HAVE BEEN RECOVERED HAD COMPENSATION BEEN PROMPTLY PAID AT THE TIME OF NATIONALIZATION IN 1972. YOUR LATEST POSITION WOULD DRASTICALLY REDUCE THE VALUE OF YOUR GOVERNMENT'S EARLIER PROPOSAL.

I BELIEVE THAT YOU APPRECIATE, MR. AMBASSADOR, THAT OPIC HAS GONE TO GREAT LENGTHS TRYING TO ACHIEVE A FAIR AND EARLY RESOLUTION OF THIS CLAIM. THE NEGOTIATIONS SHOWED THAT THERE ARE DIFFERENCES BETWEEN OUR RESPECTIVE POSITIONS

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ON SUCH ISSUES AS VALUATION STANDARDS, CURRENCY TRANSLATION PRACTICES AND LIABILITY FOR INTEREST FROM THE DATE OF NATIONALIZATION. OUR INABILITY TO REACH AGREEMENT ON THESE COMPONENT ISSUES LED TO OUR MUTUAL EFFORT TO ARRIVE AT A LUMP-SUM SETTLEMENT FIGURE THAT WOULD INVOLVE COMPROMISE ON BOTH SIDES. OUR CONCERN OVER THE PROPOSAL IN YOUR LETTER, THEREFORE, IS NOT MERELY THAT THE AMOUNT

IS INADEQUATE, BUT ALSO THAT IT APPEARS TO REQUIRE OPIC
ACCEPTANCE OF PRINCIPLES ON WHICH WE REMAIN IN DISAGREE-
MENT. THIS APPROACH COULD COMPEL US TO REASSERT OUR OWN
LEGAL POSITION ON THE ISSUES INVOLVED AND FURTHER DELAY
AND COMPLICATE THE RESOLUTION OF THIS MATTER.

I THEREFORE REQUEST, MR. AMBASSADOR, THAT YOU SEEK
CLARIFICATION OF YOUR GOVERNMENT'S POSITION AND AUTHORITY

TO CONCLUDE A SETTLEMENT FOR THE TAKA EQUIVALENT OF US
DOLLAR 620,000, PAYABLE IN ACCORDANCE WITH THE TERMS OF
THE FORM OF SETTLEMENT AGREEMENT WE SENT YOU IN FEBRUARY.

SINCERELY YOURS,

RUTHERFORD M. POATS ACTING PRESIDENT"

3. WE EXPECT THAT THE POSITION STATED IN AMBASSADOR
SIDDIQI'S LETTER WAS DICTATED BY THE BDG IN DACCA AND
THAT OPIC'S RESPONSE WILL BE COMMUNICATED BY THE
AMBASSADOR TO DACCA FOR ACTION.

4. PLEASE CABLE THE DEPARTMENT AND OPIC ANY CURRENT
INFORMATION YOU HAVE ON THIS MATTER OR MAY RECEIVE IN THE
FUTURE. VANCE

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